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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. JAMY XAYSANA, Defendant and Appellant.	A153852 (San Mateo County Super. Ct. No. NF436339)

Appellant Jamy Xaysana was sentenced to prison for the lower term of two years after a jury convicted him of first degree burglary. (Pen. Code, §§ 459, 460, subd. (a).)[1] He contends the evidence supporting his conviction is insufficient to convict him as an aider and abettor, the only theory under which he was prosecuted. (§ 31.) We disagree and affirm.

I. BACKGROUND

Gloria McIntyre was the next door neighbor of Nina Grass. On the morning of May 4, 2015, after Grass had left her house to go to work, McIntyre noticed a two-door grey Infiniti occupied by three individuals parked outside Grass's house. Although people often stopped their cars in that spot to look at the view, McIntyre became suspicious when the car stayed there quite a while and she wrote down its license plate number. McIntyre saw someone get out of the passenger side of the car and walk to Grass's house down a cement walkway. A second person got out of the back passenger

[1] Further statutory references are to the Penal Code.

seat less than five minutes later and went to the back of Grass's house. McIntyre ultimately identified co-defendants Ken Thai Tran and Kao Lio Saeteurn as the two men who got out of the car.

McIntyre telephoned Grass at work to see if she was expecting anyone. Grass called the police right away while McIntyre stayed on the line and McIntyre provided the police with the Infiniti's license plate number. The Infiniti drove away while McIntyre was on the telephone with Grass and the police, before the two men could return to the car. Grass's back door had been pried open, the house ransacked, and items were missing.

Appellant was stopped driving a grey Infiniti about .1 to .2 mile from the burglarized home. It had the same license plate number as the one McIntyre had given the police. Appellant told the officer he was working for FedEx (which was in the area), but he was not wearing a FedEx uniform and had no FedEx packages in his car.

A retired police officer who lived in the neighborhood saw Tran and Saeteurn walking up the middle of the street, and one of them looked over his shoulder like he was looking to see whether he was being followed. Another neighbor saw one of them throw a crowbar under a parked car. Police officers chased Tran and Saeteurn through several backyards and detained them at gunpoint. Tran had over $200 in his pockets that bore the distinctive marks (handwriting, post-it notes) of some "lucky" money Grass had kept framed in her house. Saeteurn gave police a false name after his arrest.

Appellant, Tran and Saeteurn lived in the same Oakland neighborhood about 25 miles away from Grass's home.

An information was filed charging appellant, Tran and Saeteurn with first degree burglary and charging Tran and Saeteurn with additional crimes and allegations. Before trial commenced, Tran pleaded no contest to first degree burglary, resisting a peace officer, and possession of burglary tools. (§§ 459, 460, subd. (a), 148, subd. (a)(1), 466.) Saeteurn pleaded no contest to giving false information to a peace officer (§ 148.9, subd. (a)) and proceeded to a joint trial with appellant on the burglary count. Both were

convicted of first degree burglary.[2] (§§ 459, 460, subd. (a).) Appellant was sentenced to prison for the two-year lower term.

II. DISCUSSION

Appellant contends that insufficient evidence supports his conviction for burglary on an aiding and abetting theory. We disagree.

To determine the sufficiency of the evidence, "we review the entire record in the light most favorable to the prosecution to determine whether it contains evidence that is reasonable, credible and of solid value, from which a rational trier of fact could find that the elements of the crime were established beyond a reasonable doubt." (*People v. Tripp* (2007) 151 Cal.App.4th 951, 955.) We presume the existence of every fact the jury might reasonably deduce from the evidence. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) Where the circumstances and the logical inferences reasonably drawn therefrom justify the jury's findings, our opinion that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal. (*Tripp*, at p. 955.) The same standard of review applies to cases in which the prosecution relies primarily on circumstantial evidence. (*People v. Brown* (2014) 59 Cal.4th 86, 106.) We must accept logical inferences the jury might have drawn from the evidence even if we would have concluded otherwise. (*People v. Solomon* (2010) 49 Cal.4th 792, 811–812.)

Burglary is the entry into a house with the intent to commit larceny or any felony. (§ 459; *Magness v. Superior Court* (2012) 54 Cal.4th 270, 273.) The prosecution did not contend appellant ever entered Grass's home and it is not disputed that appellant was convicted as an aider and abettor of Tran and Saeteurn. "[A] person who aids and abets a crime is guilty of that crime even if someone else committed some or all of the criminal acts." (*People v. McCoy* (2001) 25 Cal.4th 1111, 1117; see also § 31.) "[A] person aids and abets the commission of a crime when he or she, acting with (1) knowledge of the unlawful purpose of the perpetrator, and (2) the intent or purpose of committing,

[2] In a separate appeal, we have affirmed Saeteurn's conviction. (People v. Saeteurn (Dec. 21, 2018, A152526) [nonpub.opn.].)

encouraging, or facilitating the commission of the offense, (3) by act or advice aids, promotes, encourages or instigates, the commission of the crime." (*People v. Beeman* (1984) 35 Cal.3d 547, 561.) The question presented in this case is whether, viewing the evidence in the light most favorable to the judgment, the jury could have concluded appellant knew of Tran and Saeteurn's unlawful purpose, intended to assist them in their enterprise, and aided them in committing a burglary? The answer is a resounding "yes."

While appellant was free to argue that he did not know what Tran and Saeteurn had planned and assisted them only unwittingly by driving them to their destination, the evidence shows that (1) appellant drove them at least 25 miles from the neighborhood where they all lived to the scene of the burglary; (2) one of them was carrying a crowbar, which would have been seen by appellant; (3) the three men waited in appellant's car for quite a while before the burglary; (4) Tran and Saeteurn would have appeared to appellant to have no legitimate business at Grass's home, and he saw them enter her back yard without permission; and (5) when appellant was stopped a short distance from the burglary, he told the officer what the jury could conclude was a false story about working for FedEx at the moment of the traffic stop, suggesting a consciousness of guilt. This was sufficient for a reasonable jury to determine guilt.

It does not matter that appellant stayed outside the house or drove away without receiving any proceeds from the burglary. "The 'act' required for aiding and abetting liability need not be a substantial factor in the offense. ' "Liability attaches to anyone 'concerned,' however slight such concern may be, for the law establishes no degree of the concern required to fix liability as a principal." ' " (*People v. Swanson–Birabent* (2003) 114 Cal.App.4th 733, 743.) Thus, lookouts, getaway drivers, and persons present to divert suspicion are principals in the crime. (*Id*. at pp. 743–744.) " 'Whether defendant aided and abetted the crime is a question of fact, and on appeal all conflicts in the evidence and reasonable inferences must be resolved in favor of the judgment.' " (*People v. Campbell* (1994) 25 Cal.App.4th 402, 409.)

Appellant complains that the Attorney General refers to Tran and Saeteurn as "cohorts," and argues there is no evidence to suggest the three men associated with one

another. But the fact that Tran and Saeteurn were in appellant's car at the scene of a residential burglary, 25 miles from the area where they all lived, supports an inference that the three men knew one another and had decided together to burglarize the home together. This is not speculation or conjecture; it is common sense. Here, the jury reasonably inferred that appellant acted with the requisite purpose to aid and abet a burglary, and did not act merely as an innocent bystander.

III. DISPOSITION

The judgment is affirmed.

NEEDHAM, J.

We concur.

JONES, P.J.

SIMONS, J.